

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

GRAPHNET, INC.,

Plaintiff,

- against -

30 BROAD STREET VENTURE, LLC,

Defendant.

----- x

To the above named Defendant.

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
February 18, 2021

SILVERSMITH & ASSOCIATES LAW FIRM
PLLC
Attorneys for Plaintiff
39 Broadway, Suite 910
New York, New York 10006
(212) 922-9300

Defendant's Address:
30 BROAD STREET VENTURE, LLC
321 Greenwich Street
New York, New York 10013

Index No.

Plaintiff Designates
New York County as the
Place of Trial.

The basis of the Trial is
the site of real property.

SUMMONS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
GRAPHNET, INC.,

Index No.

Plaintiff,

COMPLAINT

- against -

30 BROAD STREET VENTURE LLC,

Defendant.
----- X

Plaintiff, Graphnet, Inc. ("Plaintiff"), by its attorneys, Silversmith & Associates Law Firm, PLLC, complaining of the defendant, 30 Broad Street Venture LLC (hereinafter "Defendant"), hereby alleges as follows:

PARTIES

1. Plaintiff is a Delaware business corporation.
2. Defendant is a Delaware limited liability company with, upon information and belief, an office at 321 Greenwich Street, New York, New York.

FACTS

3. This action concerns the Notice to Cure issued by Defendant, dated February 4, 2021 (the "Notice"), which attempts to terminate the lease between Plaintiff, as tenant, and Defendant, as landlord, dated January 15, 2020 (the "Lease"), for a portion of the 26th floor, 30 Broad Street, New York, New York (the "Premises").

4. The Notice alleges that Plaintiff has: (i) vacated, deserted and abandoned the Premises and (ii) failed to pay February 2021 rent and additional rent for the Premises.

5. The Notice demands that Plaintiff cure the alleged defaults by February 18, 2021, and alleges that Plaintiff's tenancy will be terminated upon the expiration of the cure period because of alleged defaults.

6. The cure period in the Notice was subsequently extended from February 18, 2021 to February 25, 2021.

7. Plaintiff brings this action to obtain a declaration of its rights prior to the possible expiration of its tenancy and for a permanent injunction enjoining Defendant from terminating Plaintiff's tenancy based upon the allegations in the Notice.

8. The Lease defines its "Commencement Date" as follows:

"... the later of (a) the date on which Landlord's Work (as defined below and in Exhibit "B" hereto) in the Premises is Substantially Completed (as defined in Exhibit "B" hereto), (b) the date on which Landlord's Work in the Premises would have been substantially completed but for the occurrence of any Tenant Delay Days (as defined in Exhibit "B" hereto), or (c) the date on which Tenant occupies any portion of the Premises and begins conducting business therein."

9. The Lease thereupon provides that the payment of rent shall begin on the "Commencement Date" of the Lease subject to a subsequent three month abatement of the rent from and after the Commencement Date as also set forth in the Lease.

10. Thus, the occurrence of the "Commencement Date" triggers the payment of rents due under the Lease by Plaintiff.

11. The "Commencement Date" cannot occur under the plain language of the Lease unless and until Graphnet "occupies any portion of the Premises and begins conducting business

therein." which has not yet occurred due to Graphnet not being able to occupy the Premises because of, *inter alia*, the continuing Covid-19 crisis.

12. Accordingly, February 2021 rent and additional rent is not yet due because the Commencement Date has not yet occurred.

13. Plaintiff has not abandoned, vacated or surrendered the Premises because it is not yet obligated to take possession thereof.

14. The Lease was drafted by the Defendant's attorneys.

15. The definition of "Commencement Date" is stated in clear and unambiguous language.

16. However, if there are any ambiguities in the language of any part or portion of the Lease, those ambiguities must be construed strictly against the draftsmen of the Lease.

17. Graphnet's not occupying the Premises and conducting business therein is necessary to protect the health and well-being of all of Plaintiff's officers and employees as well as the myriad of federal, state and municipal restrictions and legislation resulting from Covid-19.

18. The Covid-19 pandemic has materially and adversely impacted Plaintiff's business as neither Plaintiff's employees nor their customers (or prospective customers) will come to the Premises to conduct business.

19. Nonetheless, if this Court finds that Plaintiff must cure the alleged defaults stated in the Notice, Plaintiff stands ready, willing and able to cure the alleged defaults.

AS AND FOR A FIRST CAUSE OF ACTION

20. Plaintiff hereby repeats and re-alleges each and every allegation in paragraphs 1 through 19 as though fully set forth herein.

21. An actual justiciable controversy exists between Plaintiff and Defendant with respect to the Plaintiff's rights under the Lease as a result of Plaintiff's receipt of Defendant's Notice; the threat posed by Defendant in the Notice to terminate the lease; and Plaintiff's denial of the existence of defaults under the leases.

22. Specifically, upon information and belief, and as evidenced by the Notice, Defendant disputes the foregoing and asserts that Plaintiff is in default under the Lease for the reasons set forth in the Notice.

23. Plaintiff is entitled to a declaratory judgment declaring that Defendant may not terminate Plaintiff's tenancy on account of the erroneous allegations contained in the Notice.

24. Plaintiff would be irreparably injured and severely prejudiced if forced to wait for the termination of its tenancy to challenge Defendant's assertion that it is in violation of the lease.

25. Plaintiff has duly performed all of the terms of the Lease on its part to be performed.

26. Plaintiff has the desire, willingness and ability to cure any default that this court may find by any means short of vacating the Premises should it not be ruled that the Lease has been terminated as a matter of law and that Plaintiff must perform the acts set forth in the Notice.

27. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

28. Plaintiff hereby repeats and re-alleges each and every allegation in paragraphs 1 through 27 as though fully set forth at length herein.

29. Plaintiff has no adequate remedy at law.

30. Plaintiff is entitled to permanent injunctive relief restraining Defendant from terminating the Lease based upon the allegations set forth in the Notice.

AS AND FOR A THIRD CAUSE OF ACTION

31. Plaintiff hereby repeats and re-alleges each and every allegation in paragraphs 1 through 30 as though fully set forth at length herein.

32. The “force majeure” clause justifies Plaintiff’s not taking possession of the Premises and/or paying the rent under the Lease.

33. Lease ¶42(B) states in full that:

Except as otherwise set forth in Articles 10 and 11 above, other than for Tenant’s obligations under this Lease that can be performed by the payment of money (e.g. payment of rent and maintenance) whenever a period of time herein prescribed for action to be taken by either party hereto, and such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

34. The conditions include at least two separate conditions described in the force majeure clause that excuse Plaintiff from taking possession of the Premises, doing business therein and paying the rent thereon.

35. First, the Covid-19 pandemic constitutes an “act of God”.

36. Second, the Covid-19 pandemic constitutes “causes of any kind whatsoever which are beyond the control of such party” that allows Plaintiff to invoke the force majeure clause.

37. Since the obligation for Plaintiff to move in to the Premises precedes Plaintiff’s obligation to pay rent, the exception set forth in the force majeure clause – which excludes the payment of rent and maintenance from its coverage – is not applicable at bar.

38. Thus, Plaintiff has no obligation to take possession of the Premises, start doing business thereon and, thereafter, pay any rent under the Lease due to the force majeure clause.

39. Upon information and belief, Defendant disputes the foregoing.

40. An actual justiciable controversy exists between Plaintiff and Defendant with respect to the frustration of purpose of the Lease.

41. Plaintiff is entitled to a declaratory judgment declaring that due to the force majeure clause, Plaintiff from taking possession of the Premises, doing business therein and paying the rent thereon.

42. Plaintiff has no adequate remedy at law.

AS AND FOR A FOURTH CAUSE OF ACTION.

43. Plaintiff hereby repeats and re-alleges each and every allegation in paragraphs 1 through 42 as though fully set forth at length herein.

44. As a result of the foregoing, the purpose of Plaintiff’s entering into the Lease has been frustrated and there is no longer any purpose to the Lease for Plaintiff.

45. The aforesaid frustration was unforeseeable and substantial.

46. Upon information and belief, Defendant disputes the foregoing.

47. An actual justiciable controversy exists between Plaintiff and Defendant with respect to the frustration of purpose of the Lease.

48. Plaintiff is entitled to a declaratory judgment declaring that due to the doctrine of frustration of purpose, Plaintiff is relieved of any duty to pay rent under the Lease.

49. Plaintiff has no adequate remedy at law.

AS AND FOR A FIFTH CAUSE OF ACTION

50. Plaintiff hereby repeats and re-alleges each and every allegation in paragraphs 1 through 49 as though fully set forth at length herein.

51. The Covid-19 epidemic was unforeseeable.

52. The Covid-19 epidemic has destroyed the subject matter of the Lease, which has made performance of the Lease objectively impossible.

53. Plaintiff's obligations under the lease are discharged, excused, suspended, or abated under the doctrine of impossibility of performance.

54. Upon information and belief, Defendant disputes the foregoing.

55. An actual justiciable controversy exists between Plaintiff and Defendant with respect to the frustration of purpose of the Lease.

56. Plaintiff is entitled to a declaratory judgment declaring that due to the doctrine of impossibility of performance, Plaintiff is relieved of any duty to pay rent under the Lease.

57. Plaintiff has no adequate remedy at law.

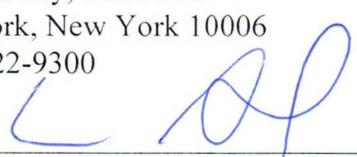
WHEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

a. On its first claim for relief, a judgment declaring that Plaintiff is not in violation of the Lease; and declaring that the Plaintiff is not required to cure as provided in the Notice and allowing it to cure if this Court deems Plaintiff to be in breach;

- b. On its second cause of action, granting a permanent injunction enjoining the termination of the Lease based upon the claims set forth in the Notice
- c. On its third cause of action, a judgment declaring that the force majeure clause suspends or terminates Plaintiff's obligations under the Lease;
- d. On its fourth cause of action, a judgment declaring that there has been a frustration of purpose of the Lease that suspends or terminates Plaintiff's obligations under the Lease; and
- e. On its fifth cause of action, a judgment declaring that there is an impossibility of performance of the Lease that suspends or terminates Plaintiff's obligations under the Lease; and
- f. Such other and further relief as this court deems just and proper.

Dated: New York, New York
February 18, 2021

Yours, etc.,
SILVERSMITH & ASSOCIATES LAW
FIRM, PLLC
Attorneys for Plaintiff
39 Broadway, Suite 910
New York, New York 10006
(212) 922-9300

By: 
Marc J. Schneider

TO: 30 BROAD STREET VENTURE LLC
Defendant